UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24

RANGER AMERICAN ARMORED SERVICES INC.

Employer

and Case 24-RC-8591

FRENTE UNIDO DE OPERADORES DE CAMIONES BLINDADOS Y GUARDIAS DE SEGURIDAD DE PUERTO RICO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein the Act, a hearing was held on February 26, 2008, before a hearing officer of the National Labor Relations Board, herein the Board, to determine whether a question concerning representation exists, and if so, to determine an appropriate unit for collective bargaining. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.[1]

[1] The Employer filed a brief which was duly considered. Upon the entire record in this proceeding the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

b. The parties stipulated and I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

c. The parties stipulated that at all material times the Employer, a corporation organized under the laws of the Commonwealth of Puerto Rico, with an office and place of business in San Juan, Puerto Rico, has been engaged in the business of transportation of valuables in armored vehicles. During the past twelve months period, the Employer, in conducting its business operations, purchased and received goods and materials valued in excess of $50,000 directly from points located outside of Puerto Rico and caused them to be transported to its place of business located in San Juan, Puerto Rico.

I. The Unit

The parties stipulated and I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of section 9(b) of the Act.

Unit:

INCLUDED: All full-time and part-time armored escorts (SWAT) employed by the Employer at its San Juan, Puerto Rico, facility.

EXCLUDED: All other employees, office clerical employees, professional employees and supervisors as defined in the Act.

II. The Issue

The sole issue in this case is whether the Petitioner has a disqualifying conflict of interest to represent the employees in the petitioned for unit. The Employer contends that the Petitioner is disqualified to represent the armored escort employees because the Petitioner already represents the employees employed by the Employer in a separate unit of armored vehicles operators, messengers and ATM technicians. Specifically, the Employer argues that due to the nature of the tasks and responsibilities of the armored escort (SWAT) employees, there would be a direct conflict of interest between the employees included in the petitioned for unit and those employees currently represented by the Petitioner.

On the other hand, the Petitioner alleges that both groups of employees are guards under the Act and that there is no such conflict of interest between the armored escorts and the guards already represented by the Petitioner.

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d. The parties stipulated and I find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
e. A question affecting commerce exist concerning the representation of certain employees of the Employer within the meaning of section 9(c) (1) and section 2(6) and (7) of the Act.

For the reasons set forth below, I conclude that the Petitioner is not disqualified to represent the petitioned for unit employees for reasons of conflict of interest.

II. Statement of Facts

A. Overview of The Employer's Operations and The Duties of The Armored Escort Employees.

The Employer is engaged in the business of the transportation of valuables and/or securities in armored vehicles. Carlos Bonilla Rivera, Assistant to the Security Director, testified on behalf of the Employer. In essence, he declared that he is responsible for the supervision of the armored escort employees, also referred to as the SWAT team, and for conducting administrative investigations. There are five employees currently employed in the position of armored escorts. Armored escorts are trained in the use of short arms and long firearms and are specialists in surveillance tactics. According to Bonilla, the two main responsibilities of the armored escorts are to ensure that the handling and transportation of valuables and securities by armored vehicle operators and messengers is done correctly (in accordance with company procedures and protocols), and to watch for the security of the armored vehicle operators and messengers. In this regard, armored escorts have to watch that the armored vehicle operator and the messenger receives, transports, dispatches and delivers valuables and/or securities properly, and to watch for the security of the personnel inside the armored vehicle, of the armored vehicle itself, and for his own safety. As part of the duties of armored escorts, he asserted that they have to provide reports to management, both verbally and in writing, regarding daily occurrences

throughout the routes they are assigned.[2] In that regard, he referred to armored escorts as the ears and eyes of management. According to Bonilla, on at least two occasions, the Employer has imposed discipline on employees represented by Petitioner as a result of reports issued by the armored escorts. The first instance involved an armored vehicle operator who allegedly fell sleep at one of the stops of his route. The incident was notified to Bonilla who instructed an armored escort to report to the area and verify the information.[3] In that case, the armored vehicle operator was terminated and the subject armored escort testified as a witness in that case. The other incident involved another armored vehicle operator who was talking on a cellular phone while on duty, and an armored escort notified the situation to Bonilla.[4]

Armored escorts report directly to the internal security department, which assign the work that they are to perform and the route they are to follow. Group leader Luis Figueroa has authority to dispatch armored escorts in the morning, but all situations and all occurrences have to be reported and referred to the Director of Operations and/or the Assistant to the Security Director.[5] According to Bonilla, after armored escorts report to work, they have to record their attendance in a punch clock, and thereafter a route is assigned to him or her to escort within a specific geographic area, such as, for example, Bayamon, San Juan or other parts of the Island. Because there are different routes in each area, the armored escort is assigned a specific route to survey. In the event that something unusual comes up while covering the assigned route, an armored

[2] However, no such written reports were submitted into evidence.
[3] No documentary evidence was submitted, however, to support the testimony of Bonilla with regard to these two incidents.
[4] It is unclear from the record what disciplinary action, if any, was taken in connection with this incident.
[5] The Employer admits that Luis Figueroa is not a supervisor.

escort has the obligation to notify immediately the Employer's offices so that action can be taken.

1. Route Coverage and Internal Communications

Although armored escorts are assigned to cover a specific route every day, the Employer can contact an armored escort by phone and order him or her to move to another route within the same area where a situation is or might be taking place.[6] Armored escorts are equipped with a radio frequency system that allows them to communicate directly with the Office Director, the Assistant to the Security Director (Bonilla) and the group leader Figueroa. According to Bonilla, armored escorts can also communicate directly with an armored vehicle operator and/or a messenger. In this regard, he declared that if an armored escort sees something unusual that is close to the armored vehicle operator or the messenger, he can approach the latter and apprise them of the situation. Also, he stated that in the instance when a truck breaks down, the armored escort can contact directly the armored vehicle operator without having to call the Director of Security in order to proceed with the repair of the truck or coordinate whatever needs to be done. According to Bonilla, at the request of management, armored escorts are allowed to intervene with, and issue orders and directives to, armored vehicle operators.

Petitioner's president, Angel Rivera, testified that Petitioner represents the armored vehicle operators, messengers, chauffeurs and ATM technicians employed by the Employer at its San Juan facility. Petitioner only represents that unit and does not

[6] In the event that an armored truck or vehicle is broken down in another route within the same geographical area, the Employer will call the armored escort assigned to that area to offer escort services to that truck while in the process of being repaired or while changing the securities from that truck to another.

have in its membership employees other than guards. He has been working for the Employer during the last seven years and a half and currently, he works as a messenger. According to Rivera, because of the dangerous nature of their work, neither the messenger nor the armored vehicle operator is allowed to open the door of the armored truck to anyone, not even to the Employer's owner. Contrary to Bonilla, Rivera testified that all communications with the armored vehicle operators or the messengers are received directly from the Employer's offices, which he referred to as the base. He further testified that armored escorts cannot give orders directly to them, such as to change a route or to open the armored vehicle's door, but rather, an armored escort would have to call the base and the base would then instruct the armored vehicles operator or messenger to follow their directives or not. According to Rivera, communications for the armored vehicles operators and the messengers are always channeled through the base. In that regard, Rivera further testified that if, while servicing a client, he observes a suspicious activity, he has to notify the base and the base would contact the armored escort by a different radio frequency. According to Rivera, during the time he has worked for the Employer, he has never had direct communications with the armored escorts. That the only instances in which an armored escort has direct contact with the armored vehicle operator is when an armored truck breaks down, but that in all other instances, including a possible robbery, the armored escort does not inform or convey any information directly to the armored vehicle operator or the messenger.

III. Analysis

A. Applicable Law.

The Board has long held that a union may not represent the employees of an employer if a conflict of interest exists on the part of the union such that a good faith collective–bargaining relationship between the union and the employer could be jeopardized. Baush & Lomb Optical Co., 108 NLRB 1555 (1954). In order to find that a union has a disabling conflict of interest, the Board requires a showing of a "clear and present" danger interfering with the bargaining process. The burden on the party seeking to prove this conflict of interest is a heavy one. Garrison Nursing Home, 293 NLRB 122 (1989), citing Quality Inn Waikiki, 272 NLRB 1 (1984), enfd. 783 F.2d 1444 (9th Cir. 1986). The mere allegation of such conflict of interest is not sufficient to sustain that burden, but rather the employer must adduce probative evidence that there is a present danger of interference with the bargaining process. Rockford Memorial Association, 247 NLRB 319 (1980).[7]

The doctrine of a disabling conflict of interest has been applied by the Board in cases such as when a union is a business competitor of the employer[8]; an enterprise controlled and dominated by the union engages in business with the employer[9]; the employer's supervisors are part of the union's internal organization[10]; a nonguard union

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[7] In this case, the Employer contended that the presence of supervisors in the Petitioner's internal organization disqualified it from representing the unit employees. Contrary to the employer's contention the Board found that the mere presence of supervisors in the petitioner's organization was insufficient to disqualify the petitioner, in the absence of evidence that the collective bargaining process would be influenced or dominated by those supervisors. Rockford Memorial Association, supra.

[8] The Board noted that in a collective bargaining relationship, it is to the benefit of all parties that the employer remains in business, but where the union is a competitor, it could derive a benefit by causing a strike or driving the employer out of business. Bausch & Lomb, supra.

[9] St. John's Hospital & Health Center, 264 NLRB 990 (1982).

[10] Sierra Vista Hospital Inc., 241 NLRB 631 (1979); Rockford Memorial Association, 247 NLRB 319 (1980).

seeks the representation of guards[11]; the petitioned for unit includes classifications disputed as supervisory or managerial employees.[12] None of these circumstances are present in this case. Rather, the Employer contends that because armored escorts, as part of their duties, may have to issue reports that could result in disciplinary action against the armored vehicle operators and/or messengers, the representation of both groups of units, albeit in separate units, would create a conflict of interest. In support of this contention, the Employer argues that an armored escort could be called to testify in disciplinary proceedings against the armored vehicle operators, including the Union officials, which would raise a problem of divided loyalties.

We are aware of no legal authority, and the Employer has not cited any, supporting the proposition that such a purported cross unit conflict may be relied upon to defeat the representation rights of employees. In this regard, is it noted that Drivers, Chauffeurs, Warehouse and Helpers etc. v. NLRB, 553 F. 2d 1368 (1977), the only case cited by the Employer, is not dispositive of the controversy in this case, as it relates to the certification of a nonguard union as the representative of a unit of armored truck guards. In the case at hand, the Petitioner is a guard union, all its members are guards, and it is undisputed that the petitioned for unit of "armored escorts (SWAT team)" are guards within the meaning of the Act.[13] At the hearing, the

[11] Section 9(b) (3) provides that the Board shall not certify a labor organization "as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." This provision takes into account potential conflicts of interest by requiring that a guard union be free to formulate its own policies and decide its own course of action, with complete independence from control by a non guard union. See Children's Hospital of Michigan, 272 NLRB 873 (1990)

[12] The rationale for excluding managerial employees from the Act's coverage is to ensure that the employees who exercise discretionary authority on behalf of the Employer will not divide their loyalties between the employer and the union. Yeshiva, 444 US at 687-88, 100 S. Ct. at 864-65.

[13] In its Brief, the Employer admits that the armored escorts (SWAT team) are guards within the meaning of the Act. To be a "guard" within the meaning of the Act, an employee must enforce against employees

parties stipulated that the armored escorts are not supervisors within the meaning of the Act.

Contrary to the Employer's contention that a conflict of interest exists because armored escorts, as part of their duties, would have to report to management any deviation or violation of company rules by armored vehicles operators and/or messengers in the handling, transportation or delivery of valuables, the Board has found that the fact that an employee in a petitioned for classification may have to monitor compliance or adherence to company procedures of employees in other classifications does not constitute, in and of itself a disabling conflict of interest. In Aerona Inc., 221 NRLB 326 (1975), the Board found no conflict of interest in the inclusion of the position of industrial nurse in a unit of office clerical and technical employees, even though said position responded to the personnel manager, and as part of it duties was required to report to management if an employee was malingering or filing invalid claims. In Bechtel Incorporate, 225 NLRB 197 (1976), a case in which the employer contended that unionization of the quality control inspectors would create a conflict of interest between the performance of their job responsibilities and their loyalty to the union, the Board found no merit in the employer's contention. In Bechtel, as here, the employer was contending that it would be denied the undivided loyalty of the inspectors if they were represented by the same union which represented the employees whose work they inspected. The Board concluded that the employer had a

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and other persons rules to protect the property of the employer's premises. Petroleum Chemicals, 121 NLRB 630 (1958). Armored truck guards are obligated to protect from theft the employer's truck and vault as well as customers' valuables entrusted to the employer. The guards therefore are employed to enforce "rules to protect property of the employer" within the meaning of Section 9(b)(c) See Local 639 (Dumbar Armored Express, Inc.) 211 NLRB 687 (1974); Armored Motor Services Co., Inc., 106 NLRB1139 (1953); Brinks Inc. 77 NLRB 1182 (1948).

substantial degree of control over the work performance of the inspector, and that there was no basis for presuming that representation of those employees, if they chose to, would result in an impairment of the performance of their duties. The Board further noted that should some questions arise concerning the improper performance of an inspector, the employer had the means to correct the situation.

With regard to the Employer's contention concerning the possibility of the armored escort having to testify in disciplinary proceeding against the armored vehicle operators, the Board in Case Corp., 304 NLRB 939 (1991) resolved a similar situation. In that case, the Board sustained the regional director's that the representation of the petitioned for industrial engineers by the petitioner would not create a conflict of interest or adversely affect the performance of their duties with regard to the employer's other employees, who already were represented by the petitioner. The Board noted that although industrial engineers had participated in the grievance procedure at the request of the employer, they served as technical advisors and, they did not have authority to make any final binding dispositions of grievances.

It appears from the record that the main responsibility of the armored escorts is to escort and protect the armored vehicles and the valuables entrusted to the Employer, and to watch for the security and life of the armored vehicles operators and messengers. The fact that on two occasions, armored escorts had reported that an armored vehicles operator violated the Employer's protocols or procedures, and that such reporting might be part of their duties, is an insufficient basis to conclude that a disabling conflict of interest exists, such that armored escorts cannot be represented by Petitioner in a separate unit.

Based upon the foregoing, I find that the Employer has not met its heavy burden to show that the Petitioner's representation of the armored escort employees would pose a clear and present danger of a disqualifying conflict of interest, such that armored escorts cannot be represented by Petitioner in a separate unit.

Accordingly, I shall direct an election in the unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.[14] Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the

[14] As provided for in Section 103.20 of the Board's Rules and Regulations, the Employer is required to post copies of the Board's Official Notice of Election in conspicuous places at least 3 full working days (excluding the day of the election, Saturdays, Sundays, and holidays) prior to the date of the election; said notices are to remain posted until the end of the election. Failure to post the election notices as required by the Board's Rules and Regulations shall be grounds for setting aside the election whenever proper and timely objections are filed. An employer shall be conclusively deemed to have received copies of the election notices unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of said notices.

election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Frente Unido de Operadores de Camiones Blindados y Guardias de Seguridad de Puerto Rico.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); North Macon Health Care Facility, 315 NLRB 359 (1994); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters in the unit found appropriate herein, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, La Torre de Plaza Suite 1002, 525 F.D. Roosevelt Ave., San Juan, Puerto Rico 00918-1002, on **March 25, 2008**. The list may be submitted by facsimile transmission. No extension of time to file the list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. This request must be received by the Board in Washington by **April 1, 2008**.[15]

Dated March 18, 2008.

/s/

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[15] In accordance with section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.